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Attorneys for Defendants
HANESBRANDS INC.
SARA LEE CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TINA HOPSON, individually and on
behalf of others similarly situated,

Plaintiff,

vs.

HANESBRANDS INC.; SARA LEE
CORPORATION and Does 1 through 50,
inclusive,

Defendants.

CASE NO. **CV 08**

0844

(Marin County Superior Court Case No. CV
072378)

**DECLARATION OF ANNE W.
NERGAARD IN SUPPORT OF NOTICE
OF REMOVAL**

FILED

FEB 7 2008

E-filing

RECEIVED BY MAILING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EDL

1 I, Anne W. Nergaard, declare and state as follows:

2
3 1. I am an attorney licensed by the Bar of the State of California, and I am
4 admitted to practice before this Court. I am an associate with the law firm of Paul, Hastings,
5 Janofsky & Walker LLP, counsel of record for Defendants Hanesbrands Inc. and Sara Lee
6 Corporation (collectively, "Defendants"), and I am one of the attorneys responsible for the
7 defense of this action. I have personal knowledge of the facts set forth in this Declaration unless
8 otherwise stated, and if called to testify under oath, could and would testify competently thereto.
9

10 2. Plaintiff Tina Hopson's ("Plaintiff") original complaint, entitled "*Tina*
11 *Hopson, individually, and on behalf of others similarly situated v. Hanesbrands Inc.; Sara Lee*
12 *Corporation and Does 1 through 20, inclusive*," Case No. CV072378, was not served on
13 Defendants. A letter from J.E.B. Pickett, one of Plaintiff's attorneys in this case, indicates that
14 the original complaint was filed on May 21, 2007. A true and correct copy of this letter is
15 attached hereto as Exhibit A.
16

17 3. On or about July 27, 2007, Plaintiff filed and served a First Amended
18 Complaint and Summons. A true and correct copy of Plaintiff's First Amended Complaint and
19 summons is attached hereto as Exhibit B.
20

21 4. Defendants filed and served their Answer to the First Amended Complaint
22 on or about August 27, 2007. A true and correct copy of the Answer is attached hereto as
23 Exhibit C.
24

25 5. On or about January 3, 2008, Plaintiff filed a Second Amended Complaint
26 in the Superior Court and a Joint Stipulation and Order regarding the Filing of the Second
27 Amended Complaint. A true and correct copy of the Second Amended Complaint, Joint
28 Stipulation and Order Re: Filing of Second Amended Complaint, and Notice and

1 Acknowledgment of Receipt of the Second Amended Complaint are attached hereto as Exhibits
2 D, E and F, respectively.

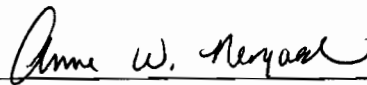
3
4 6. Defendants filed and served their Answer to the Second Amended
5 Complaint on or about February 6, 2008. A true and correct copy of the Answer is attached
6 hereto as Exhibit G.

7
8 7. Defendants have also been served with a Notice of Unavailability of
9 Counsel (received December 5, 2007). A true and correct copy of the Notice of Unavailability of
10 Counsel is attached hereto as Exhibit H. I am informed and believe that Defendants have not
11 been served with any other process, pleadings or orders.

12
13 8. A true and correct copy of the Notice to State Court and Adverse Party of
14 Filing Notice of Removal of Civil Action to Federal Court under 28 U.S.C. §§ 1331 and 1441(B)
15 is attached hereto as Exhibit I (without exhibits).

16
17 I declare under penalty of perjury under the laws of the State of California and the
18 United States of America that the foregoing is true and correct.

19
20 Executed on February 7, 2008 at San Francisco, California.

21 

22 ANNE W. NERGAARD

23
24 LEGAL_US_W # 56519449.2

WYNNE LAW FIRM



100 Drakes Landing Road, Suite 275, Greenbrae, CA 94904
tel (415) 461-6400 fax (415) 461-3900 toll free (877) 352-6400
www.wynnelawfirm.com

June 15, 2007

Via Certified U.S. Mail

Labor Workforce Development Agency
801 K Street, Suite 2101
Sacramento, CA 95814

CSC – Lawyers Incorporating Service
P.O. Box 526036
Sacramento, CA 95852

Re: Hopson v. Hanesbrands, Inc; Sara Lee Corporation, et al.

To the Labor Workforce Development Agency and Agents for Service of Process:

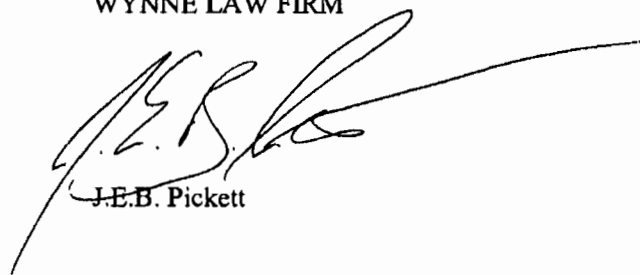
The above-noted lawsuit was originally filed on May 21, 2007, in the Superior Court of Marin County. Plaintiffs are seeking to amend the complaint to include allegations based on California Labor Code sections 2698-2699. A copy of the proposed First Amended Complaint is enclosed for reference.

On August 4, 2004, the California Legislature passed SB 1809 to modify Labor Code Sections 2698-2699 by adding Labor Code Section 2699.3. The new Labor Code Section 2699.3 requires that a claimant first send a certified letter to the employer in question and the Labor Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the Labor Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate. The enclosed information sets forth the claims and the basis for the claims.

The purpose of this letter is to satisfy the new requirement created by SB 1809. We look forward to determining whether the Labor Workforce Development Agency intends to take any action in reference to these claims. We kindly ask that you respond to this notice according to the time frame contemplated by SB 1809.

Very truly yours,

WYNNE LAW FIRM



J.E.B. Pickett

JEB:hp
encl.

COPY**FIRST AMENDED
SUMMONS
(CITACION JUDICIAL)****SUM-100****NOTICE TO DEFENDANT:****(AVISO AL DEMANDADO):**

HANESBRANDS, INC. SARA LEE CORPORATION and DOES 1 through 50 inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

TINA HOPSON, individually, on on behalf of others similarly situated,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)**FILED****JUL 27 2007**KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT

By: J. Dale, Deputy

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):
Marin County Superior Court
3501 Civic Center Drive
San Rafael, 94903

CASE NUMBER:
(Número del Caso): CV072378

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
J.E.B. Pickett (415) 461-6400 (415) 461-3900
WYNNE LAW FIRM

100 Drakes Landing Road, Suite 275
Greenbrae, CA 94904

DATE: JUL 27 2007
(Fecha)

KIM TURNER

Clerk, by
(Secretario)**J. DALE**Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☒ on behalf of (specify): Hanesbrands, Inc. Sara Lee Corporation

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

- ☐ by personal delivery on (date):

Page 1 of 1

COPY

FILED

JUL 27 2007

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Dale, Deputy

EDWARD J. WYNNE (SBN 165819)
J.E.B. PICKETT (SBN 154294)
WYNNE LAW FIRM
100 Drakes Landing Road, Suite 275
Greenbrae, California 94904
Telephone: (415) 461-6400
Facsimile: (415) 461-3900

Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

TINA HOPSON, individually, and on
behalf of others similarly situated,

Plaintiff,

vs.

HANESBRANDS, INC.; SARA LEE
CORPORATION and Does 1 through 50,
inclusive,

Defendants.

NO. CV072378

FIRST AMENDED COMPLAINT

[CLASS ACTION]

1. Violations of Labor Code
2. Violations of Business & Professions Code
§ 17200

FIRST CAUSE OF ACTION

Representative Plaintiff brings this challenge to Defendants' lucrative, repressive and unlawful business practices on behalf of themselves and a class of all others similarly situated and for a Cause of Action against Defendants, HANESBRANDS, INC., SARA LEE CORPORATION and DOES 1-50, inclusive, (hereinafter, "Defendants") and each of them, allege as follows:

This class action is brought pursuant to Section 382 of the California Code of Civil Procedure. The monetary damages for the named Plaintiff, including the pro rata share of statutory attorney fees for the named Plaintiff, does not exceed \$75,000.

Venue is proper in Marin County as at least some of the acts complained of herein occurred in Marin County as Defendants own or owned and operate or operated retail stores in Marin County and have their California principle place of business in Marin County. At all times herein mentioned, Representative Plaintiff and the class identified herein worked as employees for Defendants in salaried positions for Defendant as Service Associates. Defendants' salaried Service Associate employees covered by this action are not employees which fall into an exception to the California Labor Code Section 1194 and/or California Industrial Welfare Commission Wage Order applicable to Defendants' business. The acts complained of in this First Cause of Action occurred, at least in part, within three years of the filing of the original complaint in this action up to and including the time that this action is certified as a class action. The Representative Plaintiff, Tina Hopson, worked in a salaried position for Defendant within the State of California.

Defendant, HANESBRANDS, INC. is Maryland registered corporation, licensed to do business in California and registered with the Secretary of the State of California, with its principal place of business located in Wintson Salem, North Carolina. Plaintiff is informed and believes and thereon alleges that Defendant HANESBRANDS, INC., operates manages and controls employees who operate as service associates, assisting in the presentation of HANESBRANDS, INC., products in the state of California, during the applicable time period. Plaintiff is informed and believes and thereon alleges that in or about September of 2006, Defendant HANESBRANDS, INC., was "spun-off" from Defendant SARA LEE

1 CORPORATION as a stand alone corporation, who was the former employer of Plaintiff and
2 the class members.

3 4.

4 Defendant, SARA LEE CORPORATION., is a Maryland registered corporation,
5 licensed to do business in California with its principal place of business licensed to do business
6 in California and registered with the Secretary of the State of California, with its principal place
7 of business located in Chicago, Illinois. Plaintiff is informed and believes and thereon alleges
8 that Defendant SARA LEE CORPORATION., operated, managed and controlled employees
9 who operated as service associates, assisting in the presentation of Sara Lee Apparel products
10 in the state of California, during the applicable time period. Plaintiff is informed and believes
11 and thereon alleges that in or about September of 2006, Defendant SARA LEE
12 CORPORATION "spun-off" defendant HANESBRANDS, INC., as a stand alone corporation,
13 who became the employer of Plaintiff and the class members.
14

15 5.

16 Plaintiff is informed and believes and thereon alleges that all times herein mentioned
17 Defendants and Does 1 through 50 are and were corporations, business entities, individuals and
18 partnerships, licensed to do business and actually are or were doing business in the State of
19 California, County of Marin. Defendants operated, managed and controlled employees within
20 the State of California, including within Marin County, for the purpose of presenting apparel
21 sold by Defendants. As such, and based upon all the facts and circumstances incident to
22 Defendants' business in California, Defendants are or were subject to California Labor Code §
23 1194, *et seq.*, California Business and Professions Code § 17200, *et seq.*, (Unfair Practices Act)
24 and the applicable IWC Wage Order.
25

26 6.

27 Plaintiff does not know the true names or capacities, whether individual, partner or
28 corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason,
said Defendants are sued under such fictitious names, and Plaintiff prays leave to amend this

1 complaint when the true names and capacities are known. Plaintiff is informed and believes
2 and thereon alleges that each of said fictitious Defendants were responsible in some way for the
3 matters alleged herein and proximately caused Plaintiff and others similarly situated to be
4 subject to the illegal employment practices, wrongs and injuries complained of herein.

5
6 7.

7 At all times herein mentioned, each of said Defendants participated in the doing of the
8 acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
9 Defendants, and each of them, were the agents, servants and employees of each of the other
10 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
11 acting within the course and scope of said agency and employment.

12 8.

13 At all times herein mentioned, Defendants, and each of them, were members of, and
14 engaged in, a joint venture, partnership and common enterprise, and acting within the course
15 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

16 9.

17 At all times herein mentioned, the acts and omissions of various Defendants, and each
18 of them, concurred and contributed to the various acts and omissions of each and all of the
19 other Defendants in proximately causing the injuries and damages as herein alleged.

20 10.

21 At all times herein mentioned, Defendants, and each of them, ratified each and every act
22 or omission complained of herein. At all times herein mentioned, the Defendants, and each of
23 them, aided and abetted the acts and omissions of each and all of the other Defendants in
24 proximately causing the damages as herein alleged. Further, at all times mentioned herein, the
25 wage and hour related compensation policies of Defendants' retail store locations in California
26 are and were dictated by, controlled by, and ratified by the Defendants herein and each of them.
27
28

FACTUAL AND CLASS ALLEGATIONS**11.**

Pursuant to California Labor Code §§ 218, 218.5, 218.6, and 1194, Plaintiff may bring a civil action for overtime wages directly against the employer without first filing a claim with the California Division of Labor Standards Enforcement and may recover such wages, together with interest thereon, penalties, attorney fees and costs.

12.

Representative Plaintiff and all members of the class identified herein were regularly worked as salaried employees in excess of eight hours per workday and/or in excess of forty hours per workweek without receiving straight time or overtime compensation for such overtime hours worked in violation of California Labor Code § 1194 and the applicable IWC Wage Order. Representative Plaintiff and the other members of the class were improperly and illegally mis-classified by Defendants as "exempt" employees when, in fact, they were "non-exempt" employees according to California law. Representative Plaintiff and the class have the right to be compensated by Defendants at the appropriate compensatory wage rate for said work heretofore performed, consisting of the straight time rate plus the appropriate overtime premium as mandated by California law including interest, attorney fees and costs, and civil penalties thereon pursuant to Labor Code §§ 558 and 1197.1.

13.

Plaintiff seeks to bring this lawsuit as a class action pursuant to Code of Civil Procedure § 382. The class that plaintiff seeks to represent is defined as follows:

All salaried Service Associates who worked for Defendants in the State of California at any time during the period commencing on the date that is four years preceding the filing of the original complaint up to the time the case is certified as a class action.

The members of the class are so numerous that joinder of all members would be impractical, if not impossible. The members of the class are readily ascertainable by a review of Defendants' records. Further, the subject matter of this action both as to factual matters and

1 as to matters of law, are such that there are questions of law and fact common to the class
2 which predominate over questions affecting only individual members including, among other
3 things, the following:

4 a. Statistically, one hundred percent of the class members were paid on a salary
5 basis with no overtime compensation paid for work accomplished in excess of forty hours per
6 week, or eight hours per day. Plaintiff is informed and believes and based thereon alleges that
7 Defendants and each of them have failed to meet the requirements for establishing the
8 exemption because all class members (1) regularly spent more than 50% of their time
9 performing non-exempt work, (2) did not customarily and regularly exercise discretion and
10 independent judgment, (3) did not have the authority to hire or fire or make meaningful
11 recommendations regarding same, (4) did not customarily and regularly supervise at least two
12 employees or the equivalent, (5) did not perform work directly related to the management
13 policies or the general business operations of Defendants or Defendants' customers, (6) did
14 perform non-exempt production and/or sales work a majority of their time (i.e., in excess of
15 50%) consistent with Defendants' expectations, (7) did not customarily and regularly spend
16 more than 50% of their time away from the Defendants' place of business selling or obtaining
17 orders or contracts, and (8) did not earn more than 50% of their compensation in a bona fide
18 commission plan. Thus, Plaintiffs and the class members were not exempt from the overtime
19 requirements of California law for these reasons..
20

21 b. Defendants have or had a uniform and consistent policy and practice concerning
22 duties and responsibilities of the class members which required that the class members both
23 work overtime without pay and regularly spend a majority of their time performing non-exempt
24 tasks. Further, Defendants dispensed misinformation amongst the class members to the effect
25 that salaried employees are not entitled to overtime compensation under Defendants' labor
26 policies and practices and under California law.

27 c. Defendants have a uniform and consistent policy and practice concerning duties
28 and responsibilities of the class members such that members do not regularly and customarily

1 exercise discretion and independent judgment on matters directly related to Defendants'
2 management policies or general business operations or those of Defendants' customers.
3 Plaintiffs are informed and believe and thereon allege that as a result of Defendants' uniform
4 and consistent corporate policies and practices, class members on a class-wide basis were
5 primarily engaged in production and sales activities not involving matters of any consequence.

6 d. The duties and responsibilities of the salaried service associates were virtually
7 identical from employee to employee. Further, any variations in job activities between the
8 different individuals in these positions are legally insignificant to the issues presented by this
9 action since the central facts remain, to wit, these employees performed non-exempt work in
10 excess of 50% of the time in their workday, these employees did not regularly exercise
11 discretion and independent judgment, these employees' work routinely included work in excess
12 of 40 hours per week and/or 8 hours per day and they were not, and have never been, paid
13 overtime compensation for their work.
14

15 e. Defendants have or had a uniform and consistent policy and practice regarding
16 vacation time applicable to their salaried retail store employees. The legality of Defendants'
17 uniform policy and practice regarding the payment of earned and unused vacation pay involves
18 common questions of fact and law equally applicable to all members of the class.

19 f. Defendants have or had a uniform and consistent policy and practice for the
20 payment of wages at time of termination. The legality of Defendants' uniform policy and
21 practice regarding the payment of final wages involves common questions of fact and law
22 equally applicable to all members of the class.

23 g. Defendants have or had a uniform and consistent policy and practice of denying
24 their employees legally mandated meal and rest breaks. The legality of Defendants' uniform
25 policy and practice regarding the denial of meal and rest breaks involves common questions of
26 fact and law equally applicable to all members of the class.

27 h. Defendants have or had a uniform and consistent policy and practice concerning
28 the payment of wages to class members in violation of Labor Code § 204. The legality of

1 Defendants' uniform policy and practice regarding the timing of the payment of wages involves
2 common questions of fact and law equally applicable to all members of the class.

3 i. Defendants have or had a uniform and consistent policy and practice concerning
4 the provision of wage statements that fail to comply with Labor Code § 226. The legality of
5 Defendants' uniform policy and practice regarding the provision of wage statements involves
6 common questions of fact and law equally applicable to all members of the class.

7
8 **14.**

9 There are predominant common questions of law and fact and a community of interest
10 amongst Plaintiff and the claims of the absent class members concerning whether Defendants'
11 regular business custom and practice of requiring "overtime" work and not paying for said
12 work according to the overtime mandates of California law is, and at all times herein mentioned
13 was, in violation of California Labor Code § 1194, *et seq.*, the Unfair Practices Act and IWC
14 Wage Order 7. Defendants' employment policies and practices wrongfully and illegally failed
15 to compensate salaried employees for substantial overtime compensation earned as required by
16 California law.

17 **15.**

18 Representative Plaintiff's claims are typical of the claims of all members of the class.
19 Plaintiff will fairly and adequately protect the interests of the class by vigorously pursuing this
20 suit through attorneys who are skilled and experienced in handling civil litigation of this type.

21 **16.**

22 The California Labor Code and Wage Order provisions upon which Plaintiff asserts
23 these claims are broadly remedial in nature. These laws and labor standards serve an important
24 public interest in establishing minimum working conditions and standards in California. These
25 laws and labor standards protect the average working employee from exploitation by employers
26 who may seek to take advantage of superior economic and bargaining power in setting onerous
27 terms and conditions of employment. The nature of this action and the format of laws available
28 to Representative Plaintiff and members of the class identified herein make the class action

1 format a particularly efficient and appropriate procedure to redress the wrongs alleged herein.
2 If each employee were required to file an individual lawsuit, the corporate Defendants would
3 necessarily gain an unconscionable advantage since they would be able to exploit and
4 overwhelm the limited resources of each individual class member with their vastly superior
5 financial and legal resources. Requiring each class member to pursue an individual remedy
6 would also discourage the assertion of lawful claims by employees who would be disinclined to
7 file an action against their current or former employer for real and justifiable fear of retaliation
8 and permanent damage to their careers at subsequent employment.

9
10 **17.**

11 The prosecution of separate actions by the individual class members, even if possible,
12 would create a substantial risk of (1) inconsistent or varying adjudications with respect to
13 individual class members against the Defendants and which would establish potentially
14 incompatible standards of conduct for the Defendants, and/or (2) adjudications with respect to
15 individual class members which would, as a practical matter, be dispositive of the interests of
16 the other class members not parties to the adjudications or which would substantially impair or
17 impede the ability of the class members to protect their interests. Further, the claims of the
18 individual members of the class are not sufficiently large to warrant vigorous individual
19 prosecution considering all of the concomitant costs and expenses.

20 **18.**

21 Such a pattern, practice and uniform administration of corporate policy regarding illegal
22 employee compensation, as described herein, is unlawful and creates an entitlement to recovery
23 by Representative Plaintiff and the class identified herein, in a civil action, for the unpaid
24 balance of the full amount of the straight time compensation and overtime premiums owing,
25 including interest thereon, penalties, reasonable attorneys fees, and costs of suit according to
26 the mandate of California Labor Code § 1194, et seq.
27
28

19.

Proof of a common business practice or factual pattern, of which the named Plaintiff's experience is representative, will establish the right of each member of the plaintiff class to recovery on the causes of action alleged herein.

20.

The plaintiff class is entitled in common to a specific fund with respect to the overtime compensation monies illegally and unfairly retained by Defendants. The plaintiff class is entitled in common to restitution and disgorgement of those funds being improperly withheld by Defendants. This action is brought for the benefit of the entire class and will result in the creation of a common fund.

21.

Representative Plaintiff and members of the class identified herein as former employees were discharged by Defendants or voluntarily quit, and did not have a written contract for employment. The Defendants, in violation of California Labor Code §§ 201 and 202, *et seq.*, respectively, had a consistent and uniform policy, practice and procedure of willfully failing to pay the earned and unpaid wages of all such former employees. The Defendants have willfully failed to pay the earned and unpaid wages of such individuals, including, but not limited to, straight time, overtime, vacation time, and other wages earned and remaining uncompensated according to amendment or proof. Representative Plaintiff and other members of the class did not secret or absent themselves from Defendants nor refuse to accept the earned and unpaid wages from Defendants. Accordingly, Defendants are liable for waiting time penalties for the unpaid wages pursuant to California Labor Code § 203.

22.

As a pattern and practice, in violation of the aforementioned labor laws and wage orders, Defendants knowingly and intentionally did not maintain any records or furnish any records to the class pertaining to when Representative Plaintiff and the members of the class began and ended each work period, meal period, the total daily hours worked, and the total

1 hours worked per pay period and applicable rates of pay in violation of California Labor Code
2 §§ 226 and 1174 thereby causing injury to the class. Defendants failed to keep these records at
3 the place of employment or in a central location within the State of California in violation of
4 California Labor Code §§ 226 and 1174 thereby causing injury to the class. Accordingly,
5 Defendants and each of them are liable for civil penalties to Plaintiff and the class pursuant to
6 Labor Code §§ 226, 226.3, 558, and 1174.5.

7
8 **23.**

9 In violation of Labor Code § 226.7, Defendants failed to provide meal and rest period
10 breaks in the number, length and manner as required. At no time have Plaintiff and the class
11 entered into any written agreement with the Defendants expressly or impliedly waiving their
12 right to their meal breaks. Plaintiff and the class have been injured by Defendants' failure to
13 comply with Labor Code § 226.7 and are thus entitled to the wages set forth in Labor Code §
14 226.7 and penalties per Labor Code § 558.

15 **24.**

16 Pursuant to Labor Code § 2699, the Labor Code Private Attorneys General Act of 2004
17 (SB 796 operative January 1, 2004), Plaintiff brings this action on behalf of herself and other
18 current and former employees and seek recovery of applicable civil penalties as follows:

19 a. where civil penalties are specifically provided in the Labor Code for each of the
20 violations alleged herein, Plaintiff seeks recovery of such penalties;

21 b. where civil penalties are not established in the Labor Code for each of the
22 violations alleged herein, Plaintiff seeks recovery of the penalties established in § 2699(e) of
23 the Labor Code Private Attorneys General Act of 2004.
24

25 WHEREFORE, Representative Plaintiff, on her own behalf and on behalf of the
26 members of the class, pray for judgment as hereinafter set forth.
27
28

1

2

2

6

3

6

1 overtime compensation, (2) failing to pay to their salaried service associate employees all of
2 their earned and unused vacation pay, (3) failing to properly and timely pay to their salaried
3 service associate employees all the wages at time of termination, and (4) failing to provide meal
4 and rest breaks to their salaried service associate employees. Defendants' utilization of such
5 unfair business practices constitutes unfair competition and provides an unfair advantage over
6 Defendants' competitors. Representative Plaintiff, and other similarly situated members of the
7 class, seeks full restitution of monies, as necessary and according to proof, to restore any and
8 all monies withheld, acquired and/or converted by the Defendants by means of the unfair
9 practices complained of herein. Representative Plaintiff seeks, on her own behalf and on behalf
10 of the class, the appointment of a receiver, as necessary.

11
12 **28.**

13 Plaintiff is informed and believes and on that basis alleges that at all times herein
14 mentioned Defendants have engaged in unlawful, deceptive and unfair business practices, as
15 proscribed by California Business and Professions Code § 17200 *et seq.*, including those
16 alleged herein thereby depriving Plaintiff and other members of the class the minimum working
17 standards and conditions due to them under the California labor law and Industrial Welfare
18 Commission Wage Orders as specifically described herein.

19
20 **29.**

21 Representative Plaintiff, and all persons similarly situated, are further entitled to and do
22 seek a both a declaration that the above-described business practices are unfair, unlawful and/or
23 fraudulent and injunctive relief restraining Defendants from engaging in any of such business
24 practices in the future. Such misconduct by Defendants, unless and until enjoined and
25 restrained by order of this Court, will cause great and irreparable injury to all members of the
26 class in that the Defendants will continue to violate California law, represented by labor
27 statutes and IWC Wage Orders, unless specifically ordered to comply with same. This
28 expectation of future violations will require current and future employees to repeatedly and

1 continuously seek legal redress in order to gain compensation to which they are entitled under
2 California law. Plaintiff has no other adequate remedy at law to insure future compliance with
3 the California labor laws and Wage Orders alleged to have been violated herein.

4 WHEREFORE, Representative Plaintiff, on her own behalf and on behalf of the
5 members of the class and the general public, pray for judgment as follows:

- 6 1. For an order certifying the proposed class;
- 7 2. Upon the First Cause of Action, for consequential damages according to proof
8 as set forth in California Labor Code § 1194, *et seq.* (and California Industrial Welfare
9 Commission Wage Order 7) related to overtime wages due and owing;
- 10 3. Upon the First Cause of Action, for waiting time penalties according to proof
11 pursuant to California Labor Code § 203;
- 12 4. Upon the First Cause of Action, for civil penalties pursuant to California Labor
13 Code §§ 210, 226, 226.3, 558, 1174.5, 1197.1 and 2699;
- 14 5. Upon the First Cause of Action, for wages pursuant to Labor Code § 226.7;
- 15 6. Upon the Second Cause of Action, that Defendants be ordered to show cause
16 why they should not be enjoined and ordered to comply with IWC Wage Order 7 related to
17 payment of overtime compensation and record keeping for Defendants' salaried retail store
18 employees who are primarily engaged in non-exempt work and work more than 40 hours per
19 week or 8 hours per day and related to the failure to timely and properly pay vacation pay, final
20 wages, and provide rest and meal breaks; and for an order enjoining and restraining Defendants
21 and their agents, servants and employees related thereto;
- 22 7. Upon the Second Cause of Action, for a declaratory judgment and a decree
23 adjudging and decreeing that Representative Plaintiff and the members of the class have
24 regularly worked compensable overtime; further, that the work performed by Representative
25 Plaintiff and the members of the class is subject to overtime compensation requirements and/or
26 is in excess of 40 hours per week and/or 8 hours a day, and that Representative Plaintiff and the
27 members of the class are entitled to overtime compensation for said work and that Defendants
28

1 have failed to timely and properly pay vacation pay, final wages, and provide rest and meal
2 breaks;

3 8. Upon the Second Cause of Action, for restitution to Representative Plaintiff and
4 other similarly effected members of the class of all funds unlawfully acquired by Defendants by
5 means of any acts or practices declared by this Court to be violative of the mandate established
6 by California Business and Professions Code § 17200 *et seq.*;

7 9. For pre-judgment interest as allowed by California Labor Code §§ 1194 and
8 218.6;

9 10. For reasonable attorneys fees, expenses and costs as provided by California
10 Labor Code §§ 218.5, 226, 1194 and 2699; and,

11 11. For such other and further relief the Court may deem just and proper.
12

13
14 DATED: July 26, 2007

WYNNE LAW FIRM

15
16 By: [Signature]
17 J.E.B. Pickett, Esq.
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FILED**SUPERIOR COURT OF CALIFORNIA****County of Marin**

P.O. Box 4988

San Rafael, CA 94913-4988

MAY 22 2007**KIM TURNER**

Court Executive Officer

MARIN COUNTY SUPERIOR COURT

By: B. Jones, Deputy

PLAINTIFF: Tina Hopson

vs.

DEFENDANT: Hansbort and Jones et alCASE NO. CV 07 2378**NOTICE OF CASE
MANAGEMENT CONFERENCE
(CIVIL)**

This case is subject to the Trial Court Delay Reduction Act, Government Code § 68600 et seq., and Civil Rules of the Uniform Local Rules of the Marin County Superior Court (hereafter MCSC - Civil Rules).

Pursuant to CRC 213, this case is assigned to Judge Ritchie, Department E.
This assignment is for all purposes.

MCSC Civil Rule 1.23 and CRC 201.7(b) and 201.9(c) requires that the Summons and Complaint, a copy of this notice, a blank Case Management Conference Statement form, and an ADR information package be served and that Proof of Service be filed within 60 days of the filing date of this Complaint. CRC 201.7(d) requires that defendants file responsive pleadings within 30 days of service, unless the parties stipulate to an extension of not more than 15 days.

1. IT IS ORDERED that the parties/counsel to this action shall:

- a. Comply with the filing and service deadlines in MCSC Civil Rules 1.23 and CRC 201.7, or APPEAR IN PERSON at the Order to Show Cause hearing on the dates set forth below:

Hearing on Failure to File Proof of Service 8/2/07 9:00 A.M.

Hearing on Failure to Answer 8/31/07 9:00 A.M.

- b. Appear for a Case Management Conference on 10/12/07 9:00 A.M.

2. Telephonic appearance at Case Management Conference may be available by contacting COURT CALL, an independent vendor, not less than 5 court days before the hearing date. Parties may make arrangements by calling (888) 882-6878. This service is subject to charges by the vendor.
3. You must be familiar with the case and be fully prepared to discuss the suitability of the case for binding or non-binding arbitration, mediation, or neutral case evaluation. **Counsel must discuss ADR options with their clients prior to attending the CMC** and should be prepared to discuss with the court their authority to participate in ADR.
4. Case Management Conference Statements must be filed and served on all parties, including the Court, at least 15 calendar days before the CMC. **(A \$49.00 sanction will be charged for late filing of a statement.)**

Case Management Statement must be filed by 9/26/07

5. All Law and Motion matters will be heard on the calendar of the assigned Judge. Tentative Rulings may be obtained by calling (415) 473-7545 from 2:00 p.m. to 4:30 p.m. the court day preceding the scheduled hearing.

SUPERIOR COURT OF CALIFORNIA

County of Marin

3501 Civic Center Drive

P.O. Box 4988

San Rafael, CA 94913-4988

NOTICE TO PLAINTIFFS

**CIVIL TRIAL DELAY REDUCTION PROGRAM
REQUIRES PROCEDURES AND TIME LINES TO BE MET**

You must serve the following documents, which you will receive from the Court Clerk's office, with the complaint, on all other parties:

- A copy of this letter
- A copy of the Notice of Case Management Conference
- Stipulation to Use of Alternative Dispute Resolution Process
- Ex-Parte Application for Extension of Time to Serve Pleading and Orders
- Case Management Statement
- Notice of Stay of Proceedings
- Notice of Termination or Modification of Stay
- Notice of Settlement of Entire Case
- Statement of Agreement or Nonagreement
- ADR Information Sheet

This service must be accomplished and *Proof of Service* must be filed within 60 days of the filing of the complaint.

The Case Management Conference will be held approximately 140 days from the filing of the Complaint. The exact date and judge assignment is indicated on the form you received in the Clerk's office when you filed your complaint.

Failure to comply with the program rules may result in the imposition of sanctions and will in each instance result in the issuance of an order that you show cause why you have not complied.

Examples of Alternative Dispute Resolution (ADR) procedures offered in Marin County include:

- Binding and non-binding arbitration
- Mediation
- Neutral case evaluation

It is important that you review these programs with your client. It will increase the possibility of your client's case being resolved at an early, and less expensive, stage of the proceedings. All judges in the civil trial delay reduction program are supportive of the use of alternative dispute resolution programs and are available to meet with you and the other parties prior to your Case Management Conference to assist in selecting the most appropriate resolution mechanism for your case.

You are required to complete and return the ADR Information Form, ADR-100 or ADR-101, within 10 days of the resolution of the dispute.

Telephonic appearances at Case Management Conference may be available by contacting COURT CALL, an independent vendor, not less than 5 court days prior to the hearing date. Parties may make arrangements by calling (888) 882-6878. This service is subject to charges by the vendor.

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, address and telephone #):</i> STATE BAR NO: ATTORNEY FOR <i>(Name):</i>	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN 3501 Civic Center Drive P. O. Box 4988 San Rafael, CA 94913-4988	
STIPULATION TO USE OF ALTERNATIVE DISPUTE RESOLUTION PROCESS	CASE NUMBER:

The parties to the above action have stipulated that this case be submitted for Alternative Dispute Resolution to be decided at the Case Management Conference.

Dated

Attorney For

Dated

Attorney For

CM-020

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):		FOR COURT USE ONLY	
TELEPHONE NO.: FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:			
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:			
EX PARTE APPLICATION FOR EXTENSION OF TIME TO SERVE PLEADING AND <input type="checkbox"/> ORDER EXTENDING TIME TO SERVE AND <input type="checkbox"/> ORDER CONTINUING CASE MANAGEMENT CONFERENCE		CASE NUMBER:	
APPLICATION		HEARING DATE:	
1. Applicant (name): is		DEPT.:	
		TIME:	

APPLICATION

- | | |
|---|--|
| <p>1. Applicant (<i>name</i>):
 is
 a. <input type="checkbox"/> plaintiff
 b. <input type="checkbox"/> cross-complainant
 c. <input type="checkbox"/> petitioner
 d. <input type="checkbox"/> defendant
 e. <input type="checkbox"/> cross-defendant
 f. <input type="checkbox"/> respondent
 g. <input type="checkbox"/> other (<i>describe</i>):</p> <p>2. The complaint or other initial pleading in this action was filed on (<i>date</i>):</p> <p>3. Applicant requests that the court grant an order extending time for service of the following pleading:
 a. <input type="checkbox"/> Complaint
 b. <input type="checkbox"/> Cross-complaint
 c. <input type="checkbox"/> Petition
 d. <input type="checkbox"/> Answer or other responsive pleading
 e. <input type="checkbox"/> Other (<i>describe</i>):</p> <p>4. Service and filing of the pleading listed in item 3 is presently required to be completed by (<i>date</i>):</p> <p>5. Previous applications, orders, or stipulations for an extension of time to serve and file in this action are:
 a. <input type="checkbox"/> None
 b. <input type="checkbox"/> The following (<i>describe all, including the length of any previous extensions</i>):</p> <p>6. Applicant requests an extension of time to serve and file the pleading listed in item 3 on the following parties (<i>name each</i>):</p> | <p>DEPT.: _____</p> <p>TIME: _____</p> |
|---|--|

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):		FOR COURT USE ONLY	
TELEPHONE NO.: FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:			
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:			
CASE MANAGEMENT STATEMENT (Check one): <input type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)		CASE NUMBER:	
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: Time: Dept.: Div.: Room: Address of court (if different from the address above):			

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties (answer one):**
 - a. ☐ This statement is submitted by party (name):
 - b. ☐ This statement is submitted jointly by parties (names):
2. **Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)**
 - a. The complaint was filed on (date):
 - b. ☐ The cross-complaint, if any, was filed on (date):
3. **Service (to be answered by plaintiffs and cross-complainants only)**
 - a. ☐ All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
 - b. ☐ The following parties named in the complaint or cross-complaint
 - (1) ☐ have not been served (specify names and explain why not):
 - (2) ☐ have been served but have not appeared and have not been dismissed (specify names):
 - (3) ☐ have had a default entered against them (specify names):
 - c. ☐ The following additional parties may be added (specify names, nature of involvement in case, and the date by which they may be served):
4. **Description of case**
 - a. Type of case in ☐ complaint ☐ cross-complaint (describe, including causes of action):

CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

10. d. The party or parties are willing to participate in (check all that apply):

- (1) ☐ Mediation
 (2) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 3.822)
 (3) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 3.822)
 (4) ☐ Binding judicial arbitration
 (5) ☐ Binding private arbitration
 (6) ☐ Neutral case evaluation
 (7) ☐ Other (specify):

- e. ☐ This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.
 f. ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
 g. ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court (specify exemption):

11. Settlement conference

- ☐ The party or parties are willing to participate in an early settlement conference (specify when):

12. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (name):
 b. Reservation of rights: ☐ Yes ☐ No
 c. ☐ Coverage issues will significantly affect resolution of this case (explain):

13. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

- ☐ Bankruptcy ☐ Other (specify):

Status:

14. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.
 (1) Name of case:
 (2) Name of court:
 (3) Case number:
 (4) Status:
☐ Additional cases are described in Attachment 14a.
 b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (name party):

15. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

16. Other motions

- ☐ The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):

CM-180

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____	
NOTICE OF STAY OF PROCEEDINGS	CASE NUMBER: _____
	JUDGE: _____ DEPT.: _____

To the court and to all parties:

1. Declarant (name):
- a. ☐ is ☐ the party ☐ the attorney for the party who requested or caused the stay.
- b. ☐ is ☐ the plaintiff or petitioner ☐ the attorney for the plaintiff or petitioner. The party who requested the stay has not appeared in this case or is not subject to the jurisdiction of this court.
2. This case is stayed as follows:
- a. ☐ With regard to all parties.
- b. ☐ With regard to the following parties (specify by name and party designation):
3. Reason for the stay:
- a. ☐ Automatic stay caused by a filing in another court. (Attach a copy of the Notice of Commencement of Case, the bankruptcy petition, or other document showing that the stay is in effect, and showing the court, case number, debtor, and petitioners.)
- b. ☐ Order of a federal court or of a higher California court. (Attach a copy of the court order.)
- c. ☐ Contractual arbitration under Code of Civil Procedure section 1281.4. (Attach a copy of the order directing arbitration.)
- d. ☐ Arbitration of attorney fees and costs under Business and Professions Code section 6201. (Attach a copy of the client's request for arbitration showing filing and service.)
- e. ☐ Other:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE)

CM-181

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): TELEPHONE NO.: FAX NO. (<i>Optional</i>): E-MAIL ADDRESS (<i>Optional</i>): ATTORNEY FOR (<i>Name</i>):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	DEPT.:
NOTICE OF TERMINATION OR MODIFICATION OF STAY	JUDICIAL OFFICER:

To the court and all parties:

1. A *Notice of Stay of Proceedings* was filed in this matter on (date):
2. Declarant named below is
 - a. ☐ the party ☐ the attorney for the party who requested or caused the stay.
 - b. ☐ other (describe):
3. ☐ The stay described in the above referenced *Notice of Stay of Proceedings*
 - a. ☐ has been vacated by an order of another court. (Attach a copy of the court order.)
 - b. ☐ is no longer in effect.
4. ☐ The stay has been modified (describe):
5. The stay has been vacated, is no longer in effect, or has been modified
 - a. ☐ with regard to all parties.
 - b. ☐ with regard to the following parties (specify by name and party designation):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

ADR-100

MEDIATOR (Name and Address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____		FOR COURT USE ONLY CASE NUMBER: _____
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
CASE NAME:		
STATEMENT OF AGREEMENT OR NONAGREEMENT <input type="checkbox"/> First <input type="checkbox"/> Supplemental		
NOTE: This form must be used by mediators in the Civil Action Mediation Program (Code Civ. Proc., § 1775 et seq.) and in the Early Mediation Pilot Program (Code Civ. Proc., § 1730 et seq.).		

- This case was filed on (date if known):
- I was selected as the mediator in this matter on (date):
- Mediation (check one):
 - ☐ did not take place.
 - ☐ A party who was ordered to appear at the mediation did not appear.
 - ☐ Other reason (please specify without disclosing any confidential information):
 - ☐ took place on (date or dates): _____ and lasted a total of _____ hours.
- ☐ The mediation has not ended. I submit this form to comply with the court's requirement to do so by a specified date.
- The mediation ended (check one):
 - ☐ in full agreement by all parties on (date):
 - ☐ in partial agreement
 - ☐ in full agreement as to the following parties:
on (date):
 - ☐ in full agreement as to limited issues on (date):
 - ☐ in nonagreement.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF MEDIATOR)

NOTE: Within 10 days of the conclusion of the mediation or, when applicable, by the deadline set by the court, the mediator must serve a copy of this statement on all parties and file the original, with proof of service, with the court clerk. The proof of service on the back of this form may be used.

Page 1 of 2

NAME OF COURT: _____

ADR Information Form

This form should be filled out and returned,
within 10 days of the resolution of the dispute, to:



1. Case name: _____ No. _____
 2. Type of civil case: ☐ P/VPD-Auto ☐ P/VPD-Other ☐ Contract ☐ Other (specify): _____
 3. Date complaint filed _____ Date case resolved _____
 4. Date of ADR conference _____ 5. Number of parties _____
 6. Amount in controversy ☐ \$0-\$25,000 ☐ \$25,000-\$50,000 ☐ \$50,000-\$100,000 ☐ over \$100,000 (specify): _____
 7. ☐ Plaintiff's Attorney ☐ Cross Complainant's Attorney 8. ☐ Defendant's Attorney ☐ Cross Defendant's Attorney
- | | |
|--|--|
| NAME _____
ADDRESS _____
() _____
TELEPHONE NUMBER _____ | NAME _____
ADDRESS _____
() _____
TELEPHONE NUMBER _____ |
|--|--|
9. Please indicate your relationship to the case:

<input type="checkbox"/> Plaintiff	<input type="checkbox"/> Plaintiff's attorney	<input type="checkbox"/> Defendant	<input type="checkbox"/> Defendant's attorney
<input type="checkbox"/> 3rd party defendant	<input type="checkbox"/> 3rd party defendant's attorney	<input type="checkbox"/> Other (specify): _____	
 10. Dispute resolution process:

<input type="checkbox"/> Mediation	<input type="checkbox"/> Arbitration	<input type="checkbox"/> Neutral case evaluation	<input type="checkbox"/> Other (specify): _____
------------------------------------	--------------------------------------	--	---
 11. How was case resolved?

a. <input type="checkbox"/> As a direct result of the ADR process.	c. <input type="checkbox"/> Resolution was unrelated to ADR process.
b. <input type="checkbox"/> As an indirect result of the ADR process.	
 12. Check the closest dollar amount that you estimate you saved (attorneys fees, expert witness fees, and other costs) by using this dispute resolution process compared to resolving this case through litigation, whether by settlement or trial.

<input type="checkbox"/> \$0	<input type="checkbox"/> \$250	<input type="checkbox"/> \$500	<input type="checkbox"/> \$750	<input type="checkbox"/> \$1,000	<input type="checkbox"/> more than \$1,000 (specify): \$ _____
------------------------------	--------------------------------	--------------------------------	--------------------------------	----------------------------------	--
 13. If the dispute resolution process caused a net increase in your costs in this case, check the closest dollar amount of the additional cost:

<input type="checkbox"/> \$0	<input type="checkbox"/> \$250	<input type="checkbox"/> \$500	<input type="checkbox"/> \$750	<input type="checkbox"/> \$1,000	<input type="checkbox"/> more than \$1,000 (specify): \$ _____
------------------------------	--------------------------------	--------------------------------	--------------------------------	----------------------------------	--
 14. Check the closest number of court days that you estimate the court saved (motions, hearings, conferences, trial, etc.) as a result of this case being referred to this dispute resolution process:

<input type="checkbox"/> 0	<input type="checkbox"/> 1 day	<input type="checkbox"/> more than 1 day (specify): _____
----------------------------	--------------------------------	---
 15. If the dispute resolution process caused a net increase in court time for this case, check the closest number of additional court days:

<input type="checkbox"/> 0	<input type="checkbox"/> 1 day	<input type="checkbox"/> more than 1 day (specify): _____
----------------------------	--------------------------------	---
 16. Would you be willing to consider using this dispute resolution process again? ☐ Yes ☐ No

1 PAUL, HASTINGS, JANOFSKY & WALKER LLP
2 M. KIRBY C. WILCOX (Cal. State Bar No. 78576)
3 ANNE W. NERGAARD (Cal. State Bar No. 235058)
4 55 Second Street, 24th Floor
San Francisco, California 94105
Telephone: (415) 856-7000
Facsimile: (415) 856-7100

5 Attorneys for Defendants
6 Hanesbrands Inc. and
Sara Lee Corporation

FILED

AUG 27 2007

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: S. Petersen, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF MARIN

10
11 Tina Hopson, individually, and on behalf
12 of others similarly situated,

13 Plaintiff,

14 vs.

15 Hanesbrands Inc., Sara Lee Corporation,
16 Defendants.

CASE NO. CV072378

**ANSWER TO FIRST AMENDED
COMPLAINT**

17 TO PLAINTIFF TINA HOPSON AND HER ATTORNEYS OF RECORD, EDWARD J.
18 WYNN, J.E.B. PICKETT AND THE WYNNE LAW FIRM:

19
20 Defendants Hanesbrands Inc. and Sara Lee Corporation (collectively,
21 "Defendants"), for themselves alone and no other defendant, hereby answer the unverified
22 Complaint ("Complaint") of Plaintiff Tina Hopson ("Plaintiff") as follows:
23

24 **GENERAL DENIAL**

25 Pursuant to section 431.30(d) of the California Code of Civil Procedure, Defendants deny,
26 generally and specifically, each and every material allegation in the Complaint. Defendants
27 further deny, generally and specifically, that Plaintiff and the class she proposes (the "Proposed
28

LEGAL_US_W # 56906415.1

ANSWER TO FIRST AMENDED COMPLAINT

1 Class”), the existence of which Defendants deny, have been or will be damaged in any sum, or at
2 all, by reason of any act or omission on the part of Defendants, or any of their past or present
3 agents, representatives or employees. Defendants deny, generally and specifically, that Plaintiff
4 is entitled to the relief that she seeks or any relief.

5 **ADDITIONAL DEFENSES**

6 1. The Complaint, and each of its purported causes of action, fails to state a claim
7 upon which relief can be granted.

8 2. The Complaint, and each of its purported causes of action, are barred, in whole or
9 in part, by the applicable statutes of limitation, including but not limited to, California Code of
10 Civil Procedure sections 337, 338, 339, and 340, and/or California Business and Professions
11 Code section 17208.

12 3. The Complaint, and each of its purported causes of action, are barred, in whole or
13 in part, because Plaintiff and the class she purports to represent were, at all times material to the
14 Complaint, properly classified as exempt from overtime and related wage-and-hour laws,
15 including but not necessarily limited to Industrial Welfare Commission Wage Order 7-2001
16 paragraph 1(A)(2) (administrative exemption) and/or Industrial Welfare Commission Wage Order
17 7-2001 paragraph 3(K)(1) (motor carrier exemption) and/or Industrial Welfare Commission Wage
18 Order 16-2001 paragraph 1(c) (outside sales exemption).

19 4. Plaintiff has failed to satisfy the prerequisites for class certification and, therefore,
20 lacks standing and cannot represent the interests of others.

21 5. The types of claims alleged by Plaintiff on behalf of herself and the alleged class,
22 the existence of which is expressly denied, are matters in which individual questions predominate
23 and, accordingly, are not appropriate for class treatment.

24 6. Plaintiff has not shown and cannot show that class treatment of the claims alleged
25 in the Complaint are superior to other methods of adjudicating the controversy.

26 7. The class of persons that Plaintiff purports to represent, the existence of which is
27 expressly denied, is not so numerous that joinder is impracticable.

1 8. The claims alleged by Plaintiff are neither common to nor typical of those, if any,
2 of the alleged class that Plaintiff purports to represent, the existence of which is expressly denied.

3 9. Plaintiff is an inadequate representative of any alleged class of persons she
4 purports to represent, the existence of which is expressly denied.

5 10. Certain of the interests of members of the Proposed Class are in conflict with the
6 interests of other members of the Proposed Class.

7 11. Plaintiff is not entitled to any penalty award under the California Labor Code,
8 including but not limited to, sections 203, 210, 226, 226.3, 226.7, 558, 1174.5, 1197.1, and 2699
9 because, at all times relevant to the Complaint, Defendants did not willfully fail to comply with
10 the compensation provisions of the California Labor Code or the applicable wage order, but rather
11 acted in good faith and had reasonable grounds for believing that they did not violate the
12 compensation provisions of the California Labor Code or the applicable wage order.

13 12. Plaintiff's claim for failure to provide meal and rest periods is barred to the extent
14 that Plaintiff and/or the Proposed Class voluntarily waived or chose not to take the meal and rest
15 periods that Defendants provided.

16 13. Plaintiff's purported claim for unfair competition under California Business and
17 Professions Code section 17200 is barred because Plaintiff cannot show an injury to competition,
18 as distinguished from injury to herself.

19 14. Plaintiff's purported claim for unfair competition under California Business and
20 Professions Code section 17200 is barred because Plaintiff cannot show a deception upon the
21 public.

22 15. California Business and Professions Code section 17200 is unconstitutional in that,
23 among other things, it is void for vagueness, violative of equal protection, violative of due
24 process, an undue burden upon interstate commerce, and violative of the freedom of contract.

25 16. Plaintiff's purported claim for unfair competition under California Business and
26 Professions Code section 17200 violates Defendants' constitutional rights to due process to the
27 extent the claims do not afford Defendants the protections against multiple suits and duplicative
28 liability ordinarily provided by class actions.

1 17. Plaintiff's purported claim under California Business and Professions Code section
2 17200 violates Defendants' rights under the United States Constitution and the California
3 Constitution by attempting to enforce California Business and Professions Code sections 17200 in
4 a manner that renders the requirements of those statutes and provisions unconstitutionally vague.

5 18. Plaintiff has waived the right, if any, to pursue the claims in the Complaint, and
6 each of its purported causes of action, by reason of Plaintiff's own actions and course of conduct.

7 19. The Complaint, and each of its purported causes of action, are barred in whole or
8 in part because Defendants had an honest, good-faith belief that all decisions with respect to
9 Plaintiff's employment were made by Defendants solely for legitimate, business-related reasons
10 and were reasonably based upon the facts as Defendants understood them.

11 20. The Complaint, and each of its purported causes of action, are barred because any
12 recovery from Defendants would result in unjust enrichment to Plaintiff and/or the Proposed
13 Class.

14 21. Plaintiff's claim for pre-2004 penalties under the Private Attorneys General Act of
15 2004 is barred on the ground that the Act may not be given retroactive application.

16 22. Plaintiff's claim for penalties under the California Labor Code, including but not
17 limited to, sections 210, 226, 226.3, 226.7, 558, 1174.5, 1197.1, and 2699 is barred to the extent it
18 seeks an award of penalties beyond the one-year limitation period contained in California Code of
19 Civil Procedure section 340(a), and is also barred to the extent it seeks interest, attorneys' fees,
20 restitution, and/or Private Attorneys General penalties, on the grounds that Labor Code sections
21 210, 226, 226.3, 226.7, 558, 1174.5, 1197.1, and, but not limited to, 2699 create a penalty rather
22 than a claim for unpaid wages. Plaintiff's claim for penalties under California Labor Code
23 section 203 is barred to the extent that it seeks an award of penalties beyond the three-year statute
24 of limitations contained in that section.

25 23. The Complaint fails to state a claim for penalties under California Labor Code
26 sections 203, 210, 226, 226.3, 226.7, 558, 1174.5, 1197.1, and, but not limited to, 2699 in that
27 there is a good-faith dispute as to Defendants' obligation to pay any wages that may be found to
28 be due.

4 25. Plaintiff lacks standing to bring a claim for injunctive relief on behalf of herself
5 and/or the Proposed Class.

26. Plaintiff and/or the Proposed Class have failed to mitigate or reasonably attempt to mitigate her damages, if any, as required by law.

8 27. Sara Lee Corporation was not the employer of Plaintiff and/or the Proposed Class
9 after September 2006.

10 RELIEF REQUESTED

Defendants ask the Court to enter judgment in favor of Defendants and against Plaintiff, to award Plaintiff nothing on the Complaint and instead to dismiss the Complaint with prejudice, and to award to Defendants their costs of suit, including reasonable attorneys' fees, and such further or other relief at the Court may deem proper.

17 DATED: August 27, 2007

PAUL, HASTINGS, JANOFSKY & WALKER LLP

By: Anne W. Nergaard
ANNE W. NERGAARD

21 Attorneys for Defendants
Hanesbrands Inc. and Sara Lee Corporation

PROOF OF SERVICE

I am employed in the City and County of San Francisco, State of California. I am over the age of 18, and not a party to the within action. My business address is Paul, Hastings, Janofsky & Walker LLP, 55 Second Street, Twenty-Fourth Floor, San Francisco, California 94105-3441.

On August 27, 2007, I served the foregoing document(s) described as:

ANSWER TO FIRST AMENDED COMPLAINT

on the interested parties:

Edward J. Wynne, Esq.

Counsel for Plaintiff *Tina Hopson*

J.E.B. Pickett, Esq.

Wynne Law Firm

100 Drakes Landing Road, Suite 275

Greenbrae, CA 94904

Telephone: (415) 461-6400

Facsimile: (415) 461-3900

VIA UPS OVERNIGHT MAIL:

By delivering such document(s) to an overnight mail service or an authorized courier in a sealed envelope or package designated by the express service courier addressed to the person(s) on whom it is to be served.

VIA U.S. MAIL:

I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice such sealed envelope(s) would be deposited with the U.S. postal service on _____ with postage thereon fully prepaid, at San Francisco, California.

VIA PERSONAL DELIVERY:

By personally causing such sealed envelope(s) to be delivered by hand via *JoshCo. Attorney Services* to the offices of the address(s) pursuant to CCP §1011.

VIA FACSIMILE:

The facsimile transmission report indicated that the transmission was complete and without error. The facsimile was transmitted to Facsimile # (415) 461-3900 on _____. A copy of that report, which was properly issued by the transmitting machine, is attached hereto. [Permitted by written agreement of the parties.]

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 27, 2007, at San Francisco, California.



Helen DeVol

COPY

EDWARD J. WYNNE (SBN 165819)
J.E.B. PICKETT (SBN 154294)
WYNNE LAW FIRM
100 Drakes Landing Road, Suite 275
Greenbrae, California 94904
Telephone: (415) 461-6400
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Attorneys for Plaintiff

FILED

JAN - 3 2008

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Nause, Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MARIN

TINA HOPSON, individually, and on
behalf of others similarly situated,

Plaintiff,

vs.

HANESBRANDS, INC.; SARA LEE
CORPORATION and Does 1 through 50,
inclusive,

Defendants.

NO. CV072378

SECOND AMENDED COMPLAINT

[CLASS ACTION]

1. Violations of Labor Code
2. Violations of Business & Professions Code
§ 17200
3. Violations of the Fair Labor Standards
Act

FIRST CAUSE OF ACTION

Representative Plaintiff brings this challenge to Defendants' lucrative, repressive and unlawful business practices on behalf of themselves and a class of all others similarly situated and for a Cause of Action against Defendants, HANESBRANDS, INC., SARA LEE CORPORATION and DOES 1-50, inclusive, (hereinafter, "Defendants") and each of them, allege as follows:

1.

2.

3.

2

1 Defendant SARA LEE CORPORATION as a stand alone corporation, who was the former
2 employer of Plaintiff and the class members.

3 4.

4 Defendant, SARA LEE CORPORATION., is a Maryland registered corporation,
5 licensed to do business in California with its principal place of business licensed to do business
6 in California and registered with the Secretary of the State of California, with its principal place
7 of business located in Chicago, Illinois. Plaintiff is informed and believes and thereon alleges
8 that Defendant SARA LEE CORPORATION., operated, managed and controlled employees
9 who operated as service associates, assisting in the presentation of Sara Lee Apparel products
10 in the state of California and throughout the United States during the applicable time period.
11 Plaintiff is informed and believes and thereon alleges that in or about September of 2006,
12 Defendant SARA LEE CORPORATION "spun-off" defendant HANESBRANDS, INC., as a
13 stand alone corporation, who became the employer of Plaintiff and the class members.
14

15 5.

16 Plaintiff is informed and believes and thereon alleges that all times herein mentioned
17 Defendants and Does 1 through 50 are and were corporations, business entities, individuals and
18 partnerships, licensed to do business and actually are or were doing business in the State of
19 California, County of Marin and/or in various locations throughout the United States.
20 Defendants operated, managed and controlled employees within the State of California,
21 including within Marin County, for the purpose of presenting apparel sold by Defendants. As
22 such, and based upon all the facts and circumstances incident to Defendants' business in
23 California, Defendants are or were subject to California Labor Code § 1194, *et seq.*, California
24 Business and Professions Code § 17200, *et seq.*, (Unfair Practices Act) and the applicable IWC
25 Wage Order.
26

27 6.

28 Plaintiff does not know the true names or capacities, whether individual, partner or
corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason,

1 said Defendants are sued under such fictitious names, and Plaintiff prays leave to amend this
2 complaint when the true names and capacities are known. Plaintiff is informed and believes
3 and thereon alleges that each of said fictitious Defendants were responsible in some way for the
4 matters alleged herein and proximately caused Plaintiff and others similarly situated to be
5 subject to the illegal employment practices, wrongs and injuries complained of herein.

6
7 7.

8 At all times herein mentioned, each of said Defendants participated in the doing of the
9 acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
10 Defendants, and each of them, were the agents, servants and employees of each of the other
11 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
12 acting within the course and scope of said agency and employment.

13 8.

14 At all times herein mentioned, Defendants, and each of them, were members of, and
15 engaged in, a joint venture, partnership and common enterprise, and acting within the course
16 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

17 9.

18 At all times herein mentioned, the acts and omissions of various Defendants, and each
19 of them, concurred and contributed to the various acts and omissions of each and all of the
20 other Defendants in proximately causing the injuries and damages as herein alleged.

21 10.

22 At all times herein mentioned, Defendants, and each of them, ratified each and every act
23 or omission complained of herein. At all times herein mentioned, the Defendants, and each of
24 them, aided and abetted the acts and omissions of each and all of the other Defendants in
25 proximately causing the damages as herein alleged. Further, at all times mentioned herein, the
26 wage and hour related compensation policies of Defendants' retail store locations in California
27 are and were dictated by, controlled by, and ratified by the Defendants herein and each of them.
28

FACTUAL AND CLASS ALLEGATIONS**11.**

Pursuant to California Labor Code §§ 218, 218.5, 218.6, and 1194, Plaintiff may bring a civil action for overtime wages directly against the employer without first filing a claim with the California Division of Labor Standards Enforcement and may recover such wages, together with interest thereon, penalties, attorney fees and costs.

12.

Representative Plaintiff and all members of the class identified herein were regularly worked as salaried employees in excess of eight hours per workday and/or in excess of forty hours per workweek without receiving straight time or overtime compensation for such overtime hours worked in violation of California Labor Code § 1194 and the applicable IWC Wage Order. Representative Plaintiff and the other members of the class were improperly and illegally mis-classified by Defendants as "exempt" employees when, in fact, they were "non-exempt" employees according to California law. Representative Plaintiff and the class have the right to be compensated by Defendants at the appropriate compensatory wage rate for said work heretofore performed, consisting of the straight time rate plus the appropriate overtime premium as mandated by California law including interest, attorney fees and costs, and civil penalties thereon pursuant to Labor Code §§ 558 and 1197.1.

13.

Plaintiff seeks to bring this lawsuit as a class action pursuant to Code of Civil Procedure § 382 as to putative class members in the State of California during the applicable statutory periods and as a nation-wide collective action under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq, as to putative class members employed outside of the State of California. The classes that plaintiff seeks to represent are defined as follows:

(A) California Class

All salaried Service Associates who worked for Defendants in the State of California at any time during the period commencing on the date that

1 is four years preceding the filing of the original complaint up to the time
2 the case is certified as a class action.

3 (B) Nation-Wide Class

4 All salaried Service Associates who worked for Defendants in the United
5 States of America at any time during the period commencing on the date
6 that is three years preceding the filing of the original complaint in this
7 action up to the time this action is certified as a collective action.

8 The members of both classes are so numerous that joinder of all members would be
9 impractical, if not impossible. The members of the classes are readily ascertainable by a
10 review of Defendants' records. Further, the subject matter of this action both as to factual
11 matters and as to matters of law, are such that there are questions of law and fact common to
12 the class which predominate over questions affecting only individual members including,
13 among other things, the following:

14 a. Statistically, one hundred percent of the class members were paid on a salary
15 basis with no overtime compensation paid for work accomplished in excess of forty hours per
16 week, or eight hours per day. Plaintiff is informed and believes and based thereon alleges that
17 Defendants and each of them have failed to meet the requirements for establishing the
18 exemption because all class members (1) regularly spent more than 50% of their time
19 performing non-exempt work, (2) did not customarily and regularly exercise discretion and
20 independent judgment, (3) did not have the authority to hire or fire or make meaningful
21 recommendations regarding same, (4) did not customarily and regularly supervise at least two
22 employees or the equivalent, (5) did not perform work directly related to the management
23 policies or the general business operations of Defendants or Defendants' customers, (6) did
24 perform non-exempt production and/or sales work a majority of their time (i.e., in excess of
25 50%) consistent with Defendants' expectations, (7) did not customarily and regularly spend
26 more than 50% of their time away from the Defendants' place of business selling or obtaining
27 orders or contracts, and (8) did not earn more than 50% of their compensation in a bona fide
28 commission plan. Thus, Plaintiff and the class members were not exempt from the overtime
requirements of California and Federal law for these reasons..

1 b. Defendants have or had a uniform and consistent policy and practice concerning
2 duties and responsibilities of the class members which required that the class members both
3 work overtime without pay and regularly spend a majority of their time performing non-exempt
4 tasks. Further, Defendants dispensed misinformation amongst the class members to the effect
5 that salaried employees are not entitled to overtime compensation under Defendants' labor
6 policies and practices and under California and Federal law.

7 c. Defendants have a uniform and consistent policy and practice concerning duties
8 and responsibilities of the class members such that members do not regularly and customarily
9 exercise discretion and independent judgment on matters directly related to Defendants'
10 management policies or general business operations or those of Defendants' customers.
11 Plaintiffs are informed and believe and thereon allege that as a result of Defendants' uniform
12 and consistent corporate policies and practices, class members on a class-wide basis were
13 primarily engaged in production and sales activities not involving matters of any consequence.

14 d. The duties and responsibilities of the salaried service associates were virtually
15 identical from employee to employee. Further, any variations in job activities between the
16 different individuals in these positions are legally insignificant to the issues presented by this
17 action since the central facts remain, to wit, these employees performed non-exempt work in
18 excess of 50% of the time in their workday, these employees did not regularly exercise
19 discretion and independent judgment, these employees' work routinely included work in excess
20 of 40 hours per week and/or 8 hours per day and they were not, and have never been, paid
21 overtime compensation for their work.

22 e. Defendants have or had a uniform and consistent policy and practice regarding
23 vacation time applicable to their salaried retail store employees. The legality of Defendants'
24 uniform policy and practice regarding the payment of earned and unused vacation pay involves
25 common questions of fact and law equally applicable to all members of the class.

26 f. Defendants have or had a uniform and consistent policy and practice for the
27 payment of wages at time of termination. The legality of Defendants' uniform policy and
28

1 practice regarding the payment of final wages involves common questions of fact and law
2 equally applicable to all members of the class.

3 g. Defendants have or had a uniform and consistent policy and practice of denying
4 their employees legally mandated meal and rest breaks. The legality of Defendants' uniform
5 policy and practice regarding the denial of meal and rest breaks involves common questions of
6 fact and law equally applicable to all members of the class.

7 h. Defendants have or had a uniform and consistent policy and practice concerning
8 the payment of wages to class members in violation of Labor Code § 204. The legality of
9 Defendants' uniform policy and practice regarding the timing of the payment of wages involves
10 common questions of fact and law equally applicable to all members of the class.

11 i. Defendants have or had a uniform and consistent policy and practice concerning
12 the provision of wage statements that fail to comply with Labor Code § 226. The legality of
13 Defendants' uniform policy and practice regarding the provision of wage statements involves
14 common questions of fact and law equally applicable to all members of the class.
15

16 **14.**

17 There are predominant common questions of law and fact and a community of interest
18 amongst Plaintiff and the claims of the absent class members concerning whether Defendants'
19 regular business custom and practice of requiring "overtime" work and not paying for said
20 work according to the overtime mandates of California law is, and at all times herein mentioned
21 was, in violation of California Labor Code § 1194, *et seq.*, the Unfair Practices Act and IWC
22 Wage Order 7. Defendants' employment policies and practices wrongfully and illegally failed
23 to compensate salaried employees for substantial overtime compensation earned as required by
24 California law.

25 **15.**

26 Representative Plaintiff's claims are typical of the claims of all members of the class.
27 Plaintiff will fairly and adequately protect the interests of the class by vigorously pursuing this
28 suit through attorneys who are skilled and experienced in handling civil litigation of this type.

16.

The California Labor Code and Wage Order provisions upon which Plaintiff asserts these claims are broadly remedial in nature. These laws and labor standards serve an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Representative Plaintiff and members of the class identified herein make the class action format a particularly efficient and appropriate procedure to redress the wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual class member with their vastly superior financial and legal resources. Requiring each class member to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their current or former employer for real and justifiable fear of retaliation and permanent damage to their careers at subsequent employment.

17.

The prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of (1) inconsistent or varying adjudications with respect to individual class members against the Defendants and which would establish potentially incompatible standards of conduct for the Defendants, and/or (2) adjudications with respect to individual class members which would, as a practical matter, be dispositive of the interests of the other class members not parties to the adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses.

18.

Such a pattern, practice and uniform administration of corporate policy regarding illegal employee compensation, as described herein, is unlawful and creates an entitlement to recovery by Representative Plaintiff and the class identified herein, in a civil action, for the unpaid balance of the full amount of the straight time compensation and overtime premiums owing, including interest thereon, penalties, reasonable attorneys fees, and costs of suit according to the mandate of California Labor Code § 1194, et seq.

19.

Proof of a common business practice or factual pattern, of which the named Plaintiff's experience is representative, will establish the right of each member of the plaintiff class to recovery on the causes of action alleged herein.

20.

The plaintiff class is entitled in common to a specific fund with respect to the overtime compensation monies illegally and unfairly retained by Defendants. The plaintiff class is entitled in common to restitution and disgorgement of those funds being improperly withheld by Defendants. This action is brought for the benefit of the entire class and will result in the creation of a common fund.

21.

Representative Plaintiff and members of the class identified herein as former employees were discharged by Defendants or voluntarily quit, and did not have a written contract for employment. The Defendants, in violation of California Labor Code §§ 201 and 202, et seq., respectively, had a consistent and uniform policy, practice and procedure of willfully failing to pay the earned and unpaid wages of all such former employees. The Defendants have willfully failed to pay the earned and unpaid wages of such individuals, including, but not limited to, straight time, overtime, vacation time, and other wages earned and remaining uncompensated according to amendment or proof. Representative Plaintiff and other members of the class did not secret or absent themselves from Defendants nor refuse to accept the earned and unpaid

1 wages from Defendants. Accordingly, Defendants are liable for waiting time penalties for the
2 unpaid wages pursuant to California Labor Code § 203.

3 **22.**

4 As a pattern and practice, in violation of the aforementioned labor laws and wage
5 orders, Defendants knowingly and intentionally did not maintain any records or furnish any
6 records to the class pertaining to when Representative Plaintiff and the members of the class
7 began and ended each work period, meal period, the total daily hours worked, and the total
8 hours worked per pay period and applicable rates of pay in violation of California Labor Code
9 §§ 226 and 1174 thereby causing injury to the class. Defendants failed to keep these records at
10 the place of employment or in a central location within the State of California in violation of
11 California Labor Code §§ 226 and 1174 thereby causing injury to the class. Accordingly,
12 Defendants and each of them are liable for civil penalties to Plaintiff and the class pursuant to
13 Labor Code §§ 226, 226.3, 558, and 1174.5.

14 **23.**

15 In violation of Labor Code § 226.7, Defendants failed to provide meal and rest period
16 breaks in the number, length and manner as required. At no time have Plaintiff and the class
17 entered into any written agreement with the Defendants expressly or impliedly waiving their
18 right to their meal breaks. Plaintiff and the class have been injured by Defendants' failure to
19 comply with Labor Code § 226.7 and are thus entitled to the wages set forth in Labor Code §
20 226.7 and penalties per Labor Code § 558.

21 **24.**

22 Pursuant to Labor Code § 2699, the Labor Code Private Attorneys General Act of 2004
23 (SB 796 operative January 1, 2004), Plaintiff brings this action on behalf of herself and other
24 current and former employees and seek recovery of applicable civil penalties as follows:

25 a. where civil penalties are specifically provided in the Labor Code for each of the
26 violations alleged herein, Plaintiff seeks recovery of such penalties;
27
28

b. where civil penalties are not established in the Labor Code for each of the violations alleged herein, Plaintiff seeks recovery of the penalties established in § 2699(e) of the Labor Code Private Attorneys General Act of 2004.

WHEREFORE, Representative Plaintiff, on her own behalf and on behalf of the members of the class, pray for judgment as hereinafter set forth.

SECOND CAUSE OF ACTION

COMES NOW, Representative Plaintiff, individually and on behalf of the class and as a second, separate and distinct cause of action against Defendants, and each of them, alleges as follows:

25.

Plaintiff herein repeats and re-alleges as though fully set forth at length each and every paragraph of this Complaint, excepting those paragraphs which are inconsistent with this cause of action for relief regarding Defendants' violations of California Business and Professions Code § 17200 *et seq.* (Unfair Practices Act).

26.

At all times herein mentioned Defendants, and each of them, acting as the employer, individually or through officers, directors, agents or employees of another have (1) required or caused Representative Plaintiff and the class to work for longer hours than those fixed or under conditions prohibited by Industrial Welfare Commission Wage Orders applicable to Defendants' business, (2) paid or caused to be paid to Plaintiffs and the class less than the minimum fixed by the applicable IWC Wage Order, and (3) violated, refused, or neglected to comply with any provision of Part 4, Chapter 1 of the Labor Code beginning at § 1171 or any order or ruling of the Industrial Welfare Commission. As a result of the foregoing and the acts complained of herein, Defendants, and each of them, are guilty of violating California Labor Code §§ 204, 216, 1198 and 1199. In addition to the other violations of the law set forth in the First Cause of Action, Defendants' violations of California Labor Code §§ 204, 216, 1198 and

1 1199 serve as a further basis for Defendants' liability under California Business & Professions
2 Code § 17200, *et seq.*

3 27.

4 Defendants, and each of them, have engaged in unfair business practices in California
5 by practicing, employing and utilizing the employment practices as outlined herein, to wit, by
6 (1) requiring their salaried service associate employees to perform the labor services without
7 overtime compensation, (2) failing to pay to their salaried service associate employees all of
8 their earned and unused vacation pay, (3) failing to properly and timely pay to their salaried
9 service associate employees all the wages at time of termination, and (4) failing to provide meal
10 and rest breaks to their salaried service associate employees. Defendants' utilization of such
11 unfair business practices constitutes unfair competition and provides an unfair advantage over
12 Defendants' competitors. Representative Plaintiff, and other similarly situated members of the
13 class, seeks full restitution of monies, as necessary and according to proof, to restore any and
14 all monies withheld, acquired and/or converted by the Defendants by means of the unfair
15 practices complained of herein. Representative Plaintiff seeks, on her own behalf and on behalf
16 of the class, the appointment of a receiver, as necessary.

18 28.

19 Plaintiff is informed and believes and on that basis alleges that at all times herein
20 mentioned Defendants have engaged in unlawful, deceptive and unfair business practices, as
21 proscribed by California Business and Professions Code § 17200 *et seq.*, including those
22 alleged herein thereby depriving Plaintiff and other members of the class the minimum working
23 standards and conditions due to them under the California labor law and Industrial Welfare
24 Commission Wage Orders as specifically described herein.

25 29.

26 Representative Plaintiff, and all persons similarly situated, are further entitled to and do
27 seek a both a declaration that the above-described business practices are unfair, unlawful and/or
28 fraudulent and injunctive relief restraining Defendants from engaging in any of such business

1 practices in the future. Such misconduct by Defendants, unless and until enjoined and
2 restrained by order of this Court, will cause great and irreparable injury to all members of the
3 class in that the Defendants will continue to violate California law, represented by labor
4 statutes and IWC Wage Orders, unless specifically ordered to comply with same. This
5 expectation of future violations will require current and future employees to repeatedly and
6 continuously seek legal redress in order to gain compensation to which they are entitled under
7 California law. Plaintiff has no other adequate remedy at law to insure future compliance with
8 the California labor laws and Wage Orders alleged to have been violated herein.

9 **THIRD CAUSE OF ACTION**

10
11 COMES NOW, Representative Plaintiff, individually and on behalf of the nation-wide
12 class and as a third, separate and distinct cause of action against Defendants, and each of them,
13 alleges as follows:

14 **30.**

15 Plaintiff herein repeats and re-alleges as though fully set forth at length each and every
16 paragraph of this Complaint, excepting those paragraphs which are inconsistent with this cause
17 of action for relief regarding Defendant's violations of the Fair Labor Standards Act, 29 U.S.C.
18 section 201 *et seq.* ("FLSA").

19 **31.**

20
21 The FLSA states that an employee must be paid overtime, equal to 1.5 times the
22 employee's regular rate of pay, for all hours worked in excess of 40 per week. During the
23 Nation-Wide Class Period, Class members worked more than 40 hours per week but were not
24 paid overtime at a rate equal to 1.5 times the employee's regular rate of pay, for all hours worked
25 in excess of 40 per week.
26
27
28

1 32.

2 Nation-Wide Class members do not meet the tests for exempt status under the FLSA.
3 Defendant has violated the FLSA by not paying the required FLSA overtime pay to the members
4 of the Class. Defendant's violation was willful.
5

6 33.

7 Pursuant to 29 U.S.C. section 201 *et seq.*, plaintiff requests an order certifying the
8 Nation-Wide Class as a collective action under the FLSA and requiring defendants to pay all the
9 FLSA overtime wages, liquidated damages, and interest due to the Class, in an amount to be
10 proved at trial.
11

12 WHEREFORE, Representative Plaintiff, on her own behalf and on behalf of the
13 members of the class and the general public, pray for judgment as follows:

- 14 1. For an order certifying the proposed class;
- 15 2. Upon the First Cause of Action, for consequential damages according to proof
16 as set forth in California Labor Code § 1194, *et seq.* (and California Industrial Welfare
17 Commission Wage Order 7) related to overtime wages due and owing;
- 18 3. Upon the First Cause of Action, for waiting time penalties according to proof
19 pursuant to California Labor Code § 203;
- 20 4. Upon the First Cause of Action, for civil penalties pursuant to California Labor
21 Code §§ 210, 226, 226.3, 558, 1174.5, 1197.1 and 2699;
- 22 5. Upon the First Cause of Action, for wages pursuant to Labor Code § 226.7;
- 23 6. Upon the Second Cause of Action, that Defendants be ordered to show cause
24 why they should not be enjoined and ordered to comply with IWC Wage Order 7 related to
25 payment of overtime compensation and record keeping for Defendants' salaried retail store
26 employees who are primarily engaged in non-exempt work and work more than 40 hours per
27 week or 8 hours per day and related to the failure to timely and properly pay vacation pay, final
28

1 wages, and provide rest and meal breaks; and for an order enjoining and restraining Defendants
2 and their agents, servants and employees related thereto;

3 7. Upon the Second Cause of Action, for a declaratory judgment and a decree
4 adjudging and decreeing that Representative Plaintiff and the members of the class have
5 regularly worked compensable overtime; further, that the work performed by Representative
6 Plaintiff and the members of the class is subject to overtime compensation requirements and/or
7 is in excess of 40 hours per week and/or 8 hours a day, and that Representative Plaintiff and the
8 members of the class are entitled to overtime compensation for said work and that Defendants
9 have failed to timely and properly pay vacation pay, final wages, and provide rest and meal
10 breaks;

11 8. Upon the Second Cause of Action, for restitution to Representative Plaintiff and
12 other similarly effected members of the class of all funds unlawfully acquired by Defendants by
13 means of any acts or practices declared by this Court to be violative of the mandate established
14 by California Business and Professions Code § 17200 *et seq.*;

15 9. Upon the Third Cause of Action, for an order certifying the Nation-Wide Class
16 as a collective action under the FLSA, 29 U.S.C. § 201 *et seq.*;

17 10. Upon the Third Cause of Action, for compensatory damages;

18 11. Upon the Third Cause of Action, for liquidated damages pursuant to 29 USC
19 216(b);

20 12. Upon the Third Cause of Action, for a declaratory judgment declaring that the
21 Defendants have willfully and wrongfully violated its statutory and legal obligations and
22 deprived Plaintiff and all other who are similarly situated of their rights, privileges, protections,
23 compensation, benefits and entitlements under the law, as alleged herein;

24 13. Upon the Third Cause of Action, for injunctive relief;

25 14. For interest according to proof;

26 15. For reasonable attorneys fees, expenses and costs as provided by California
27 Labor Code §§ 218.5, 226, 1194, 2699 and Section 16(b) of the FLSA; and,
28

1 16. For such other and further relief the Court may deem just and proper.

2
3 DATED: 12/26/, 2007

WYNNE LAW FIRM

4
5 By: 
6 J.E.B. Pickett

1 EDWARD J. WYNNE (SBN 165819)
2 J.E.B. PICKETT (SBN 154294)
3 WYNNE LAW FIRM
4 100 Drakes Landing Road, Suite 275
5 Greenbrae, California 94904
6 Telephone: (415) 461-6400
7 Facsimile: (415) 461-3900

8 Attorneys for Plaintiff

FILED

JAN - 3 2008

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Naue, Deputy

9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF MARIN

11
12 TINA HOPSON, individually, and on
13 behalf of others similarly situated,

14 Plaintiff,

15 vs.

16 HANESBRANDS, INC.; SARA LEE
17 CORPORATION and Does 1 through 50,
18 inclusive,

19 Defendants.

NO. CV 07 2378

**JOINT STIPULATION AND ORDER RE:
FILING OF SECOND AMENDED
COMPLAINT**

[CLASS ACTION]

Dept.: E
Hon. Hon. James R. Ritchie

20
21
22 Plaintiff Tina Hopson ("Plaintiff") and Defendants Hanesbrands, Inc. and Sara Lee
23 Corporation (collectively, "Defendants") (collectively, the "Parties") hereby state and stipulate
24 as follows:

25 WHEREAS, this matter was originally filed in the Superior Court of the State of
26 California for the County of Marin on May 22, 2007;
27
28

1 WHEREAS, Plaintiff filed an Amended Complaint on July 27, 2007, as a matter of
2 right, alleging further violations of California Labor Code Provisions pursuant to the Private
3 Attorney General Act; and

4
5 WHEREAS, Plaintiff filed the instant action as one seeking certification as a Class
6 Action on behalf of all salaried Service Associates who worked for Defendants in the State of
7 California at any time during the period commencing on the date that is four years preceding
8 the filing of the original complaint up to the time the case is certified as a class action; and

9
10 WHEREAS, the Complaint alleges violations of various provisions of the California
11 Labor Code and alleges that Defendants misclassified Plaintiff and the putative class members
12 as exempt employees when in fact they were non-exempt employees and that, accordingly,
13 Plaintiff and the members of the class were allegedly denied overtime for every hour they
14 worked over 40 in a week; and

15
16 WHEREAS, Plaintiff now seeks to add additional allegations and a nationwide class
17 under the FLSA as to all salaried Service Associates employed by Defendants in the United
18 States at any time during the period commencing on the date that is three years preceding the
19 filing of the original complaint in this action up to the time this action is certified as a collective
20 action; and

21
22 WHEREAS, Defendants do not object to the filing of the Second Amended Complaint
23 nor to the addition of any of the substantive allegations therein; and

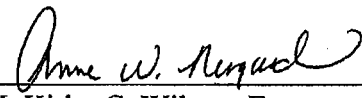
24 WHEREAS, Defendants deny each and every material allegation of the Complaint and
25 deny that Plaintiff and/or any member of the putative class are entitled to any recovery under
26 the allegations of the Complaint;
27
28

1 **Therefore;**

2 Based on the foregoing, by and through their undersigned attorneys, the Parties
3 HEREBY STIPULATE AND REQUEST that the Court issue an Order permitting Plaintiff to
4 file the Second Amended Complaint as appended herewith and Order said Complaint be
5 deemed filed as of the date of the signing of this Order.
6

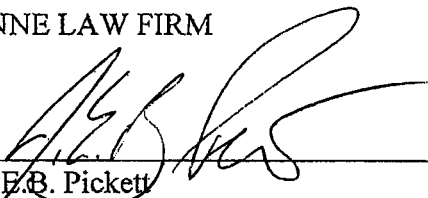
7 Dated: December 21, 2007

PAUL, HASTINGS, JANOFSKY &
WALKER LLP

9
10 By: 
11 M. Kirby C. Wilcox, Esq.
12 Anne W. Nergaard, Esq.
13 Attorneys for Defendants Hanesbrands,
14 Inc. and Sara Lee Corporation

15 Dated: December 21, 2007

WYNNE LAW FIRM

16
17 By: 
18 J.E.B. Pickett
19 Attorneys for Plaintiff
20 Tina Hopson
21
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1 PURSUANT TO STIPULATION, IT IS HEREBY ORDERED THAT PLAINTIFF BE
2 PERMITTED TO FILE THE SECOND AMENDED COMPLAINT AND THAT
3 PLAINTIFF'S SECOND AMENDED COMPLAINT BE DEEMED FILED AS OF THIS
4 DATE.
5

6 JAN - 3 2008
7 DATED: ~~December~~, 2007

8
9 J.R. Ritchie
10 Hon. James R. Ritchie
11 Superior Court Judge
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POS-015

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Edward J. Wynne (165819) J.E.B. Pickett (154294) WYNNE LAW FIRM 100 Drakes Landing Road, Suite 275 Greenbrae, CA 94904 TELEPHONE NO.: (415) 461-6400 FAX NO. (Optional): (415) 461-3900 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Marin STREET ADDRESS: 3501 Civic Center Drive MAILING ADDRESS: PO Box 4988 CITY AND ZIP CODE: San Rafael, 94913 BRANCH NAME:	
PLAINTIFF/PETITIONER: Tina Hopson DEFENDANT/RESPONDENT: Hanesbrands, Inc.; Sara Lee Corporation	
NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL	CASE NUMBER: CV072378

TO (Insert name of party being served): Kirby Wilcox**NOTICE**

The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

Date of mailing: January 7, 2007

J.E.B. Pickett

(TYPE OR PRINT NAME)

(SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

ACKNOWLEDGMENT OF RECEIPT

This acknowledges receipt of (to be completed by sender before mailing):

- ☐ A copy of the summons and of the complaint.
- ☒ Other: (specify): A copy of the Second Amended Complaint

(To be completed by recipient):

Date this form is signed: 1/11/08Hanesbrands Inc.; Sara Lee Corporation(TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY,
ON WHOSE BEHALF THIS FORM IS SIGNED)(SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF
ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

PAUL, HASTINGS, JANOFSKY & WALKER LLP
M. KIRBY C. WILCOX (Cal. State Bar No. 78576)
ANNE W. NERGAARD (Cal. State Bar No. 235058)
55 Second Street, 24th Floor
San Francisco, California 94105
Telephone: (415) 856-7000
Facsimile: (415) 856-7100

Attorneys for Defendants
HANESBRANDS INC. and
SARA LEE CORPORATION

FILED

FEB 06 2008

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: S. Bond, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN

TINA HOPSON, individually, and on
behalf of others similarly situated,

Plaintiff,

vs.

HANESBRANDS INC., SARA LESS
CORPORATION and DOES 1 through 50,
inclusive,

Defendants.

CASE NO. CV072378

**ANSWER TO SECOND AMENDED
COMPLAINT**

TO PLAINTIFF TINA HOPSON AND HER ATTORNEYS OF RECORD, EDWARD J.
WYNN, J.E.B. PICKETT AND THE WYNNE LAW FIRM:

Defendants Hanesbrands Inc. and Sara Lee Corporation (collectively,
"Defendants"), for themselves alone and no other defendant, hereby answer the unverified
Second Amended Complaint ("Complaint") of Plaintiff Tina Hopson ("Plaintiff") as follows:

GENERAL DENIAL

Pursuant to section 431.30(d) of the California Code of Civil Procedure, Defendants deny,
generally and specifically, each and every material allegation in the Complaint. Defendants

1 further deny, generally and specifically, that Plaintiff and the class she proposes (the "Proposed
2 Class"), the existence of which Defendants deny, have been or will be damaged in any sum, or at
3 all, by reason of any act or omission on the part of Defendants, or any of their past or present
4 agents, representatives or employees. Defendants deny, generally and specifically, that Plaintiff
5 is entitled to the relief that she seeks or any relief.

6 Without admitting any facts alleged by Plaintiff, Defendants also set forth the following
7 defenses to the Complaint:

8 **ADDITIONAL DEFENSES**

9 1. The Complaint, and each of its purported causes of action, fails to state a claim
10 upon which relief can be granted.

11 2. The first and second purported causes of action are barred, in whole or in part, by
12 the applicable statutes of limitation, including but not limited to, California Code of Civil
13 Procedure sections 337, 338, 339, and 340, and/or California Business and Professions Code
14 section 17208.

15 3. The first and second purported causes of action are barred, in whole or in part,
16 because Plaintiff and the class she purports to represent were, at all times material to the
17 Complaint, properly classified as exempt from overtime and related wage-and-hour laws,
18 including but not necessarily limited to Industrial Welfare Commission Wage Order 7-2001
19 paragraph 1(A)(2) (administrative exemption) and/or Industrial Welfare Commission Wage Order
20 7-2001 paragraph 3(K)(1) (motor carrier exemption) and/or Industrial Welfare Commission Wage
21 Order 16-2001 paragraph 1(c) (outside sales exemption).

22 4. The Complaint, and each of its purported causes of action, is barred because
23 Plaintiff fails to satisfy the prerequisites for class certification and, therefore, lacks standing and
24 cannot represent the interests of others.

25 5. The Complaint, and each of its purported causes of action, is barred because the
26 types of claims alleged by Plaintiff on behalf of herself and the alleged classes, the existence of
27 which is expressly denied, are matters in which individual questions predominate and,
28 accordingly, are not appropriate for class treatment.

1 6. The Complaint, and each of its purported causes of action, is barred because
2 Plaintiff has not shown and cannot show that class treatment of the claims alleged in the
3 Complaint are superior to other methods of adjudicating the controversy.

4 7. The Complaint, and each of its purported causes of action, is barred because the
5 classes of persons that Plaintiff purports to represent, the existence of which is expressly denied,
6 is not so numerous that joinder is impracticable.

7 8. The Complaint, and each of its purported causes of action, is barred because the
8 claims alleged by Plaintiff are neither common to nor typical of those, if any, of the alleged
9 classes that Plaintiff purports to represent, the existence of which is expressly denied.

10 9. The Complaint, and each of its purported causes of action, is barred because
11 Plaintiff is an inadequate representative of any alleged classes of persons she purports to
12 represent, the existence of which is expressly denied.

13 10. The Complaint, and each of its purported causes of action, is barred because
14 certain of the interests of members of the Proposed Classes are in conflict with the interests of
15 other members of the Proposed Classes.

16 11. As to first and second purported causes of action, Plaintiff is not entitled to any
17 penalty award under the California Labor Code, including but not limited to, sections 203, 210,
18 226, 226.3, 226.7, 558, 1174.5, 1197.1, and 2699 because, at all times relevant to the Complaint,
19 Defendants did not willfully fail to comply with the compensation provisions of the California
20 Labor Code or the applicable wage order, but rather acted in good faith and had reasonable
21 grounds for believing that they did not violate the compensation provisions of the California
22 Labor Code or the applicable wage order.

23 12. As to the first purported cause of action, Plaintiff's claim for failure to provide
24 meal and rest periods is barred to the extent that Plaintiff and/or the Proposed Classes voluntarily
25 waived or chose not to take the meal and rest periods that Defendants provided.

26 13. The second purported cause of action under California Business and Professions
27 Code section 17200 is barred because Plaintiff cannot show an alleged injury to competition, as
28 distinguished from alleged injury to herself.

1 14. The second purported cause of action under California Business and Professions
2 Code section 17200 is barred because Plaintiff cannot show a deception upon the public.

3 15. The second purported cause of action under California Business and Professions
4 Code section 17200 is barred because section 17200 unconstitutional in that, among other things,
5 it is void for vagueness, violative of equal protection, violative of due process, an undue burden
6 upon interstate commerce, and violative of the freedom of contract.

7 16. The second purported cause of action under California Business and Professions
8 Code section 17200 violates Defendants' constitutional rights to due process to the extent the
9 claims do not afford Defendants the protections against multiple suits and duplicative liability
10 ordinarily provided by class actions.

11 17. The second purported cause of action under California Business and Professions
12 Code section 17200 violates Defendants' rights under the United States Constitution and the
13 California Constitution by attempting to enforce California Business and Professions Code
14 section 17200 in a manner that renders the requirements of that statute unconstitutionally vague.

15 18. The second purported cause of action under the California Business and
16 Professions Code is barred because the remedies for the alleged violations are limited to the
17 remedies expressly provided in the California Labor Code.

18 19. The Complaint, and each of its purported causes of action, are barred in whole or
19 in part because Plaintiff has waived the right, if any, to pursue the claims in the Complaint, and
20 each of its purported causes of action, by reason of Plaintiff's own actions and course of conduct.

21 20. The Complaint, and each of its purported causes of action, are barred in whole or
22 in part because Defendants had an honest, good-faith belief that all decisions with respect to
23 Plaintiff's employment were made by Defendants solely for legitimate, business-related reasons
24 and were reasonably based upon the facts as Defendants understood them.

25 21. The Complaint, and each of its purported causes of action, are barred because any
26 recovery from Defendants would result in unjust enrichment to Plaintiff and/or the Proposed
27 Classes.

22. Plaintiff's claim for pre-2004 penalties under the Private Attorneys General Act of 2004 in the purported first cause of action is barred on the ground that the Act may not be given retroactive application.

23. As to the first and second purported causes of action, Plaintiff's claim for penalties under the California Labor Code, including but not limited to, sections 210, 226, 226.3, 226.7, 558, 1174.5, 1197.1, and 2699 is barred to the extent it seeks an award of penalties beyond the one-year limitation period contained in California Code of Civil Procedure section 340(a), and is also barred to the extent it seeks interest, attorneys' fees, restitution, and/or Private Attorneys General penalties, on the grounds that Labor Code sections 210, 226, 226.3, 226.7, 558, 1174.5, 1197.1, and, but not limited to, 2699 create a penalty rather than a claim for unpaid wages. Plaintiff's claim for penalties under California Labor Code section 203 is barred to the extent that it seeks an award of penalties beyond the three-year statute of limitations contained in that section.

24. As to the first and second purported causes of action, the Complaint fails to state a claim for penalties under California Labor Code sections 203, 210, 226, 226.3, 226.7, 558, 1174.5, 1197.1, and, but not limited to, 2699 in that there is a good-faith dispute as to Defendants' obligation to pay any wages that may be found to be due.

25. The Complaint and each of its causes of action are barred to the extent Plaintiff and/or the Proposed Classes seek injunctive and equitable relief, because an adequate and complete remedy at law exists.

26. Plaintiff lacks standing to bring a claim for injunctive relief on behalf of herself and/or the Proposed Classes.

27. Plaintiff and/or the Proposed Classes have failed to mitigate or reasonably attempt to mitigate their damages, if any, as required by law.

28. The Complaint and each of its causes of action are barred as to Sara Lee Corporation after September 2006, as Sara Lee Corporation was not the employer of Plaintiff and/or the Proposed Classes after September 2006.

1 29. As to the third purported cause of action, with respect to some or all claims
2 brought by Plaintiff and the class of persons she purports to represent, the existence of which are
3 expressly denied, Defendants affirmatively plead that any acts or omissions which may be found
4 to be in violation of the rights afforded by the FLSA were not willful but occurred in good faith
5 with reasonable grounds for believing that Defendants were in full compliance with the FLSA.
6 As such, the statute of limitations can be no longer than two (2) years, as provided under the
7 FLSA. 29 U.S.C. section 255(a).

8 30. Neither Defendant nor its officers, directors, managers, or agents knew or intended
9 that their acts or omissions, if any, would be prohibited by the FLSA or the California Labor
10 Code, and did not show reckless indifference to or disregard for the requirements of the FLSA or
11 the California Labor Code or ratify any such acts or omissions.

12 31. The Complaint, and each of its purported causes of action, is barred because
13 Plaintiff, and the classes of persons she purports to represent, the existence of which are expressly
14 denied, is precluded from recovering any amounts from Defendants where Defendants have paid
15 Plaintiff or the classes of persons Plaintiff purports to represent, the existence of which are
16 expressly denied, all sums legally due under California and federal law.

17 32. Any alleged violation of the FLSA or the California Labor Code by Defendant, or
18 either of them, or their officers, directors, managers, or agents (and Defendant denies that any
19 such violation has occurred), was committed through inadvertence, accident, or ordinary
20 negligence or was an honest mistake, after diligent inquiry, about the meaning of the law.

21 33. As to the third purported cause of action, Defendants and their officers, directors,
22 managers, and agents acted in good faith, in actual conformity with, and in reliance on a written
23 administrative regulation, order, ruling, approval, or interpretation, in effect at the time, of the
24 United States Department of Labor or other agency.

25 34. As to the third purported cause of action, some or all of the disputed time for
26 which Plaintiff, and the classes of persons she purports to represent, the existence of which are
27 expressly denied, seeks recovery of wages purportedly owed is not compensable pursuant to the
28 *de minimis* doctrine.

1 35. As to the third purported cause of action, to the extent Plaintiff or any putative
2 class member worked "off the clock," they did so without the Defendants' actual or constructive
3 knowledge and in violation of Hanesbrands, Inc. policies.

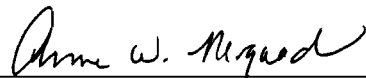
4 **RELIEF REQUESTED**

5 Defendants ask the Court to enter judgment in favor of Defendants and against Plaintiff, to
6 award Plaintiff nothing on the Complaint and instead to dismiss the Complaint with prejudice,
7 and to award to Defendants their costs of suit, including reasonable attorneys' fees, and such
8 further or other relief at the Court may deem proper.

9
10 DATED: February 6, 2007

PAUL, HASTINGS, JANOFSKY & WALKER LLP

11
12 By: _____



13 ANNE W. NERGAARD

14 Attorneys for Defendants
15 HANESBRANDS, INC.
16 SARA LEE CORPORATION
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PROOF OF SERVICE

I declare:

I am a citizen of the United States and employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 55 Second Street, Twenty-Fourth Floor, San Francisco, California 94105-3441. On February 6, 2008, I served a copy of the within document(s):

• **ANSWER TO SECOND AMENDED COMPLAINT**

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.
- ☒ by placing the document(s) listed above in a sealed United Parcel Service, Inc. envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a UPS agent for delivery.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

Edward J Wynne, Esq.
J.E.B. Pickett, Esq.
Wynne Law Firm
100 Drakes Landing Road, Suite 275
Greenbrae, CA 94904

(Facsimile: (415) 461-3900

Attorneys for Plaintiff

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 6, 2008, at San Francisco, California.



Helen DeVol

COPY

RECEIVED

DEC 05 2007

PAUL, HASTINGS, JANOFSKY
& WALKER LLP

Edward J. Wynne (SBN #165819)
J.E.B. Pickett (SBN #154294)

WYNNE LAW FIRM

100 Drakes Landing Road, Suite 275
Greenbrae, CA 94904
(415) 461-6400

Attorneys for Plaintiffs

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MARIN

TINA HOPSON, individually, and on behalf
of others similarly situated,

Plaintiff,

vs.

HANESBRANDS, INC.; SARA LEE
CORPORATION and Does 1 through 50,
inclusive,
Defendants.

NO. CV072378

**NOTICE OF UNAVAILABILITY OF
COUNSEL**

TO DEFENDANT AND ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Plaintiffs' counsel will not be available from December 24, 2007, through January 1, 2008, inclusive. Counsel's office will be closed during this entire time. Therefore, Plaintiffs' counsel will not be available to make any appearances, oppose any motions or ex parte applications during that time.

DATED: December 3, 2007

WYNNE LAW FIRM

Edward J. Wynne
Attorneys for Plaintiffs

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PROOF OF SERVICE

I am employed in the County of Marin; I am over the age of eighteen years and not a party to the within entitled action; my business address is 100 Drakes Landing Road, Suite 275, Greenbrae, CA 94904.

On **December 3, 2007**, I served the following document(s) on the interested party(ies) in this action by placing true copies thereof enclosed in sealed envelopes and/or packages addressed as follows:


NOTICE OF UNAVAILABILITY OF COUNSEL

☒ **BY MAIL:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

M. Kirby Wilcox
Anne W. Nergaard
PAUL HASTINGS JANOFSKY &
WALKER, LLP
55 Second Street, 24th Floor
San Francisco, CA 94105

☒ **STATE:** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct

Executed on December 3, 2007 at Greenbrae, California.


Heidi Phillips

1 PAUL, HASTINGS, JANOFSKY & WALKER LLP
2 M. KIRBY C. WILCOX (SB# 78576) kirbywilcox@paulhastings.com
3 ANNE W. NERGAARD (SB# 235058) annenergaard@paulhastings.com
4 Twenty-Fourth Floor
5 55 Second Street
6 San Francisco, CA 94105-3441
7 Telephone: (415) 856-7000
8 Facsimile: (415) 856-7100

9 Attorneys for Defendants
10 HANESBRANDS INC.
11 SARA LEE CORPORATION

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF MARIN

14 TINA HOPSON, individually and on
15 behalf of others similarly situated,

16 Plaintiff,

17 vs.

18 HANESBRANDS INC.; SARA LEE
19 CORPORATION and Does 1 through 50,
20 inclusive,

21 Defendants.

CASE NO. CV 072378

**NOTICE TO STATE COURT AND
ADVERSE PARTY OF FILING NOTICE
OF REMOVAL OF CIVIL ACTION TO
FEDERAL COURT UNDER 28 U.S.C.
§§ 1331 AND 1441(B)**

1 TO THE CLERK OF THE COURT, PLAINTIFF TINA HOPSON AND TO HER ATTORNEYS
2 OF RECORD, EDWARD J. WYNNE AND J.E.B. PICKETT OF THE WYNNE LAW FIRM:

3
4 PLEASE TAKE NOTICE that on February 7, 2008, defendants Hanesbrands Inc.
5 and Sara Lee Corporation removed this action from this Court to the United States District Court
6 for the Northern District of California. Attached to this notice as Exhibit A is a copy of the
7 Notice Of Removal Of Civil Action To Federal Court and the Declaration of Anne Nergaard In
8 Support Thereof.

9
10 DATED: February 7, 2008

PAUL, HASTINGS, JANOFSKY & WALKER LLP

11
12
13 By: Anne W. Nergaard
ANNE W. NERGAARD

14 Attorneys for Defendant
15 HANESBRANDS INC.
16 SARA LEE CORPORATION
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PROOF OF SERVICE

I declare:

I am a citizen of the United States and employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 55 Second Street, Twenty-Fourth Floor, San Francisco, California 94105-3441. On February 7, 2008, I served a copy of the within document(s):

• **NOTICE OF FILING NOTICE OF REMOVAL OF CIVIL ACTION TO FEDERAL COURT**

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.
- ☒ by placing the document(s) listed above in a sealed United Parcel Service, Inc. envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a UPS agent for delivery.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

Edward J Wynne, Esq.
J.E.B. Pickett, Esq.
Wynne Law Firm
100 Drakes Landing Road, Suite 275
Greenbrae, CA 94904

(Facsimile: (415) 461-3900

Attorneys for Plaintiff

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 7, 2008, at San Francisco, California.


Helen DeVol